The Complainant
The 'complainant' is the name of the person, union or employer making the complaint. If more than one person is filing the complaint, they may all be named as 'complainants'.

The Respondent
The 'respondent' is the person, union or employer against whom the complaint is made and from whom a remedy is sought.

First Paragraph
The section or sections of the *Labour Relations Act* alleged to have been violated is entered here. The Board may grant a remedy *only if* it finds that the *Labour Relations Act* has been violated by the respondent. See paragraph 1 of the Notes on page 2 of the form.

Set out the remedy that is sought from the Board against the respondent.

Paragraph No. 1 (a) and 1 (b)
Name, address and telephone number of the person, union or employer making the complaint.

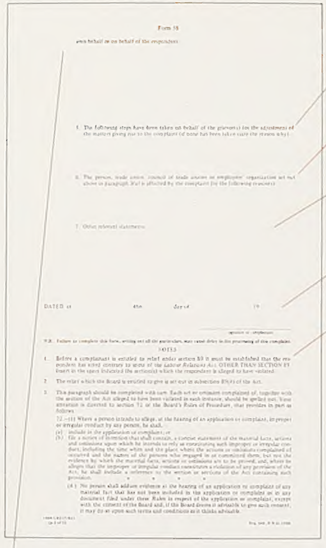
Paragraph No. 1 (c) and 1 (d)
The same information is required for the person, union or employer against whom the complaint is made.

Paragraph No. 2
A person, union or employer who makes a complaint on their own behalf is the 'grievor' as well as the 'complainant'. However, if the complainant is making a complaint on behalf of another person, the person on whose behalf the complaint is made is the 'grievor'.

Paragraph No. 3
List here the person, union or employer who may be affected by the outcome of this complaint. They will also be given a copy of the complaint and notice of the proceeding before the Board. For example, if the complaint alleges that a union has violated its duty of fair representation, the employer may be named here if the remedy sought will affect the collective agreement or involve a referral to arbitration.


Form 58
LABOUR RELATIONS ACT
COMPLAINT UNDER SECTION 69 OF THE ACT
BEFORE THE ONTARIO LABOUR RELATIONS BOARD

Paragraph No. 4
This section of the form requires a concise description of the conduct that the complainant alleges violates the *Labour Relations Act.* It should include the date when the conduct occurred, the name of the person who committed the acts complained of and the sections of the *Labour Relations Act* that have been violated by that conduct. If there is insufficient space on the form for all of the particulars, additional sheets may be used and attached.



Paragraph No. 4 (Continued)
Failure to provide details of the illegal acts complained of so that the respondent has a fair opportunity to prepare for the hearing or defend itself may result in the complaint being delayed or dismissed.

Paragraph No. 5
Set out what attempts, if any, have been made to resolve the dispute prior to the filing of the complaint.

Paragraph No. 6
State the reasons why the person, union or employer named in paragraph 3 may be affected by the complainant.

Paragraph No. 7
Any additional statements relating to the complaint may be set out in this paragraph.

Date
Date and sign the form.

Notes
These notes should be read carefully to help avoid any delay in the Board's processing of your complaint.

How to Obtain Form 58
You may obtain copies of Form 58 on request by calling, writing or visiting the offices of the Ontario Labour Relations Board at:

400 University Avenue
Toronto, Ontario
M7A 1V4

Telephone:
(416) 965-4151

The Labour Relations Act:

Unfair Labour Practice Proceedings Before the Ontario Labour Relations Board

The *Labour Relations Act* of Ontario provides the framework within which the large majority of employers, employees and trade unions under provincial jurisdiction may engage in orderly collective bargaining.

The *Labour Relations Act* does not apply to employees employed by the federal government or in federally regulated industries such as interprovincial transportation and communications, radio and television stations, grain elevators and banks; nor does it apply to employees of community colleges and the provincial government, firefighters and members of a police force, teachers employed by school boards under the *Education Act*, domestics employed in a private home and persons employed in agriculture, hunting or trapping.

In order to foster healthy collective bargaining, the *Labour Relations Act* gives a number of rights to employers, employees and trade unions covered by the Act. Conduct that violates those rights is prohibited. The Ontario Labour Relations Board, established by the *Labour Relations Act*, is a tribunal that has the authority to provide remedies for such violations.

The most common type of violations dealt with by the Board relate either to allegations of employer interference with employees' or unions' rights under the Act, or to allegations by employees of unfair representation by their union.

Employer Interference with Rights Conferred by the Act

What prevents an employer from interfering with its employees' rights under the Labour Relations Act?

The *Labour Relations Act* protects the right of employees to join a union and participate in its lawful activities. The Act states that no employer may interfere with the formation or selection of a union by employees. Among other things, this means that an employer cannot use intimidation, coercion, threats, promises or undue influence to interfere with those rights.

What can be done if an employer fires an employee because the employee is a union supporter?

It is illegal for an employee to be fired or penalized for this reason. If this happens, the employee or his or her union may submit a complaint to the Board by filing four copies of Form 58 — 'Complaint of Unfair Labour Practice Under section 89 of the Act'.

What happens when such a complaint is made?

Normally, the Board will send out one of its Labour Relations Officers to see if a settlement can be worked out. All discussions with the Officers are confidential. If no settlement is reached, the Board will generally hold a hearing. The panel of the Board conducting the hearing *does not* receive any information from the Officer that arose during settlement discussions. At the hearing, the employer will need to give an explanation for the discharge. It will be up to the employer to prove that the discharge was lawful, which means that the employer must show that the employee was fired for some reason other than union activity.

The key issue is whether the employee was fired for exercising rights under the *Labour Relations Act*. The Board *does not rule on the 'fairness' of the firing*. The grounds for firing an employee might exist, but the actual firing can be unlawful if these grounds were the excuse for the firing and not the reason. On the other hand, a petty or unfair reason for discharging an employee *will not be* a violation of the *Labour Relations Act*, if that, rather than the employee's union activity, was the real reason for the firing.

What happens if the Board decides that an employee was fired for exercising rights under the Labour Relations Act?

The Board can order the employee's reinstatement with back pay and interest. The amount of this back pay will be decreased by any amount the employee earned at another job between the time of discharge and reinstatement. If the employee did not look for other employment, back pay may be decreased by the amount that could have been earned if the employee had looked for a job. The Board may also require the employer to sign and post notices stating that it was found in violation of the *Labour Relations Act* and undertaking to comply with the Act in the future. Other remedies such as union access to employees on company time and company premises, union access to employee bulletin boards etc. have been awarded too.

Union's Duty to Represent Employees Fairly

What is the nature of the unions' duty?

The *Labour Relations Act* imposes a duty upon a trade union to fairly represent all of the employees in any bargaining unit for which it has bargaining rights, whether or not the employees are union members. It is a violation of the Act for a union to represent employees in a manner that is arbitrary, discriminatory or in bad faith. If, for example, an employee's complaint concerns the alleged mishandling of a grievance, a breach of that duty will not be established if the employee simply shows that the union could have, or even should have, treated the grievance differently. It is *not whether the union was right or wrong* that is the concern of the Board, *but whether the union's actions were motivated by bad faith, whether it was discriminating against the employee or whether it acted in an arbitrary manner*. For example, the Board has found that a union acts arbitrarily when it *completely ignores* a grievance or where it treats a matter in an indifferent or perfunctory fashion. However, it is not arbitrary for a union to put its mind to the complaint or grievance and honestly decide not to take the complaint or grievance further.

May a trade union refuse to process a grievance or to refer it to arbitration?

A trade union is entitled to make decisions that may adversely affect some employees in the bargaining unit as long as it is not acting on improper motives, and honestly considers the matter.

A trade union is entitled to settle or refuse to process a grievance provided it does not act in a manner that is arbitrary, discriminatory or in bad faith. Indeed, collective agreements often contain provisions requiring the parties to meet and endeavour to settle complaints or grievances short of arbitration. A union is *not required* to process a grievance or refer it to arbitration simply because an employee feels that he or she has a 'good' case or 'wants his or her day in court'. The union is entitled to consider many factors, including the merits of the grievance, the relative chances of success and the interests of the bargaining unit as a whole, in determining how it will deal with an employee's grievance or complaint. Union officials may make honest mistakes or exercise poor judgment, but these occurrences may not in themselves be a violation of the *Labour Relations Act*.

Does the Board resolve the merits of an employee's grievance when the union refuses to refer it to arbitration?

No. While the merits of the grievance may be relevant in assessing the trade union's conduct, the Board will not resolve the merits of the grievance. This is a matter for a board of arbitration or arbitrator established in accordance with the terms of the collective agreement under the *Labour Relations Act*. However, when the union is found to have breached the Act, the Board may refer a grievance to arbitration.

What can be done if an employee feels the union has acted contrary to its duty?

It is not necessary for an employee to be a union member to file a complaint against a union under the Act; any employee in the bargaining unit who is subjected to union treatment that is arbitrary, discriminatory or in bad faith may do so. An employee who thinks that the union has violated its duty may submit a complaint to the Board by filing four copies of Form 58 — 'Complaint of Unfair Practice Under Section 89 of the Act'.

What happens after a complaint is filed?

When a complaint is filed, a Labour Relations Officer will normally be sent out by the Board to meet with the employee and the union and try to have them settle the complaint. If no settlement is reached, the Board will hold a hearing to deal with the allegation made by the employee. At the hearing, the employee must prove that the union violated the *Labour Relations Act* by establishing that it acted in a manner that was arbitrary, discriminatory or in bad faith. This is normally done by leading evidence to prove the allegations made against the union. The union is then given an opportunity to present its evidence to the contrary.

What can the Board do if it finds that the union has not fairly represented the employee?

The Board has wide powers to fashion a remedy to the problem; it may order what, if anything, shall be done or not done. Such an order might include a cease and desist direction; an award of damages and interest; a referral of the grievance to arbitration; and a requirement that the union sign and distribute notices stating that it was found in violation of the *Labour Relations Act* and undertaking to comply with the Act in the future.

If the employee seeks a remedy affecting the employer, the employer should be named as a party to the complaint.

More detailed information concerning the *Labour Relations Act* and procedures relating to unfair labour practice proceedings may be found in the Board's publication entitled *A Guide to the Labour Relations Act*.

Ontario
Labour Relations
Board

400 University Ave.
Toronto, Ontario
M7A 1V4

Telephone
(416) 965-4151

Note:

This pamphlet is prepared for purposes of convenience only. In order to ascertain your strict legal rights, reference should be made to the *Labour Relations Act*, and Regulations, and Board decisions.

10M/2/87 Rep.